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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,368	09/12/2005	Michael Crothers	833.009	1515

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BOYLE FREDRICKSON S.C.		
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EXAMINER	
SRIVASTAVA, KAILASH C	

ART UNIT	PAPER NUMBER
1657	

NOTIFICATION DATE	DELIVERY MODE
01/09/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary

Application No.

10/532,368

Applicant(s)

CROTHERS ET AL.

Examiner

Dr. Kailash C. Srivastava

Art Unit

1657

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 01 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION:

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/ are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The Preliminary amendment filed 20 April 2005 is acknowledged and entered.

Informal Matters

2. Please note that the correct Serial Number of your Application under prosecution at United States Patent and Trademark Office (i.e., USPTO) is 10/532,368. Please ensure that the correct U.S. Serial Number for this application is cited in all future correspondence with this Office.
3. The assigned Art Unit location of your application cited *supra* at the USPTO is 1657. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1657.
4. The assigned Examiner to your application cited *supra* at the USPTO is Dr. Kailash C. Srivastava. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Examiner Kailash C. Srivastava in Art Unit 1657.

Objection to Oath

5. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. §1.67(a) identifying this application by application number and filing date is required. See M.P.E.P. §602.01 and §602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 C.F.R. §1.52(c).

Claims Status

6. Claims 11-12 have been added.
7. Claims 1 and 3-10 have been amended
8. Claims 1-12 are pending.

Election /Restriction

9. This application contains the following groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1. Restriction to one of the following inventions is required under 35 U.S.C. §121 and 372.

- Group I, consisting of claims 1-3 and 8-9, drawn to microcapsules comprising lipophilic active encapsulated in a capsule of a plurality of microorganisms.
- Group II, consisting of claims 4-6, drawn to a method to manufacture microcapsules comprised of a plurality of microorganisms encapsulating lipophilic active, wherein during said manufacturing a microorganism and a lipophilic active are brought together in a temperature range of 45 °C to 60°C and a conditioning step in a temperature range of 15 °C to 50°C .
- Group III, consisting of claims 4, 7 and 11-12, drawn to a method to manufacture microcapsules comprising bringing together a plurality of microorganisms and a lipophilic active, wherein the microorganism cell wall and cell membrane encapsulate the lipophilic active.
- Group IV, consisting of claim 10 drawn to a method to administer a microcapsule comprised of a plurality of microorganisms, each encapsulating in its intact cell wall and membrane a lipophilic active microorganism.

Inventions are Independent or Distinct

10. The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The special technical features of the inventions in groups II-IV are methods, whereas technical feature of invention in Group I is a composition that is manufactured according to the methods in Groups II-III and a method to utilize said composition (i.e., Group IV invention). Thus, inventions in Groups II-IV are all drawn to a method. Furthermore, none of the inventions in Groups II-IV share the same or similar technical feature of invention in Group I, a composition/formulation. Furthermore, the inventions engrouped in groups II-IV each do not share a common technical feature, because they each have

different components, different steps in conducting said claim methods, different modes of operation, they have different functions, and/or they have different final effects. Moreover, the alleged special technical feature, in invention of Group II or III invention about making a plurality of microorganisms comprising bringing together plurality of microorganisms and a lipophilic active, do not provide a contribution over the prior art as evidenced by for e.g., Bishop et al. (Microencapsulation in Yeast Cells, Journal of Microencapsulation, Volume 15, number 6, Pages 761-763, 1998) because prior art discusses methods and formulations comprising steps and components described for the instantly claim methods of Groups II-III inventions, and Product encompassed in instantly grouped Group I invention I (i.e., Claims 1-3 and 8-9). Since no special technical feature exists among the inventions in groups I-IV, there is no unity of invention.

11. Please be advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 C.F.R. §1.143). An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

12. Applicants are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. §1.48(b) and by the fee required under 37 C.F.R. §1.17(I).

13. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of M.P.E.P. §821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 C.F.R. §1.116; amendments submitted after allowance are governed by 37 C.F.R. §1.312.


In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 C.F.R. §1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. §101, §102, §103, and §112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise

include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. §121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See M.P.E.P. §804.01.

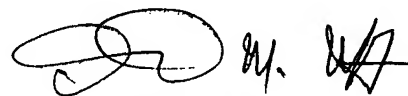
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Jon Weber can be reached at (571)-272-0925 Monday through Thursday 7:30 A.M. to 6:00 P.M. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (i.e., PAIR) system. Status information for the published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (i.e., EBC) at: (866)-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


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Art Unit 1657
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31 December 2007


DAVID M. NAFT
PRIMARY EXAMINER
ART UNIT 1281657